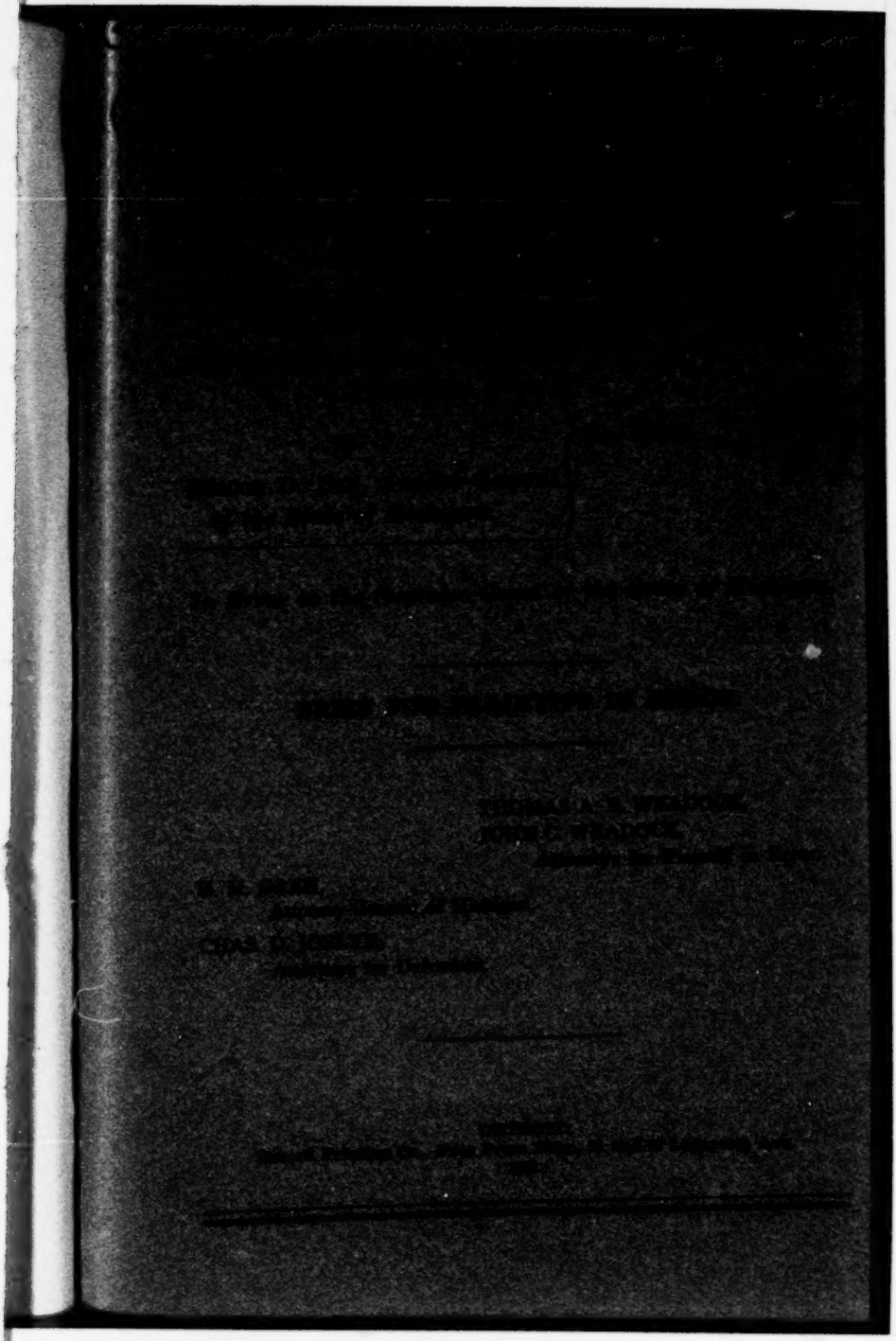

Supreme Court of the United States

OCTOBER TERM, 1901.

THE MICHIGAN SUGAR COMPANY, *Plaintiff in Error,*

vs.

ROSCOE D. DIX, *Auditor-General of the State of Michigan.*

In Error to the Supreme Court of Michigan.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

The plaintiff in error is a Michigan corporation engaged in the manufacture of sugar from beets. In 1897 the Legislature of Michigan passed a law, being Public Act 48, page 55, Sec. 1245, Compiled Laws of 1897, providing that there should be paid out of the State treasury to any person, firm or corporation engaged in the manufacture in the State of Michigan of sugar from sugar beets grown in the State of Michigan, one cent per pound for each pound of sugar so manufactured under the conditions and restrictions of said act. These conditions were that the beets should be grown in the State and contain at least 90 per cent of crystalized sugar, and the manufacturer should produce receipts and vouchers to show that at least $4 per ton of twenty thousand pounds had been paid for all beets purchased containing 12 per cent of sugar. The quantity and quality of sugar and amount of bounty was to be determined by the Commissioner of the State Land Office, with which officer manufacturers were to file statements setting forth their proposed undertaking and the capacity of their manufactory, and the quantity they intended to manufacture per annum. The Commissioner of the State Land Office was

to appoint a weigh-man and inspectors under whose direction the sugar was to be placed in original packages and branded by them, their fees to be paid by the manufacturer. Weigh-men and inspectors were to file an oath in the office of the Secretary of State, to make monthly reports and determine the weight and percentage of sugar. Claims under the act were to be paid upon the warrant of the Auditor-General, money to be raised by general tax, and the bounty was to be paid for the period of seven years. Under this act the plaintiff in error earned the bounty for 1898 and received it, and also earned $24,262.99 in 1899, which sum was certified by the Commissioner of the State Land Office, and upon demanding a warrant on the State Treasurer for that amount from the Auditor-General he refused to give it, and a writ of mandamus was asked for from the Supreme Court of Michigan, to compel him to do so. The Auditor-General acted on the advice of the Attorney-General of Michigan. The Auditor-General claimed that the act granting the bounty was unconstitutional and that no appropriation had been made to pay it. The Supreme Court of Michigan sustained the contention, and the Sugar Company appealed to this Court. The plaintiff in error claims that Act 263 of 1899, which is set out in the brief, was an appropriation to pay this bounty, and that the amount of money earned became its property, in which it had a vested right and of which it could not be deprived without violating the Constitution of the United States. It also claims that Art. XIII., Sec. 11, of the Constitution of Michigan authorizes the Legislature to enact the bounty law in question.

This case presents two main questions:

1. Does the State of Michigan, by the action of the Auditor-General, deprive The Michigan Sugar Company of its property without due process of law in contravention of the XIVth Amendment to the Constitution of the United States?

2. May the State of Michigan, under its Constitution, pay a bounty for the successful culture of a new agricultural product in that State, viz.: sugar beets.

3. Will this Court consider itself bound to follow the Supreme Court of Michigan in construing the Constitution of that State?

The plaintiff in error was the first to produce beet sugar in the State of Michigan, and is the pioneer of the many factories in that State. The situation was fully and fairly

Public Acts, Michigan, 1899, No. 263.

"An act to provide a tax to meet the several appropriations for which a tax is not otherwise provided, for the general expenses of the State government, salaries of the State officers, expenses of the State departments and expenses of the legislature for the years eighteen hundred ninety-nine and nineteen hundred."

The People of the State of Michigan enact:

SECTION 1. There shall be levied upon the aggregate of taxable real and personal property of the State in the year eighteen hundred and ninety-nine, the sum of one million, sixteen thousand, six hundred two dollars and seventy-two cents, and for the year nineteen hundred the sum of nine hundred eighty-two thousand two hundred sixty-two dollars, to be raised by tax to meet the several appropriations made by law wherein no tax is otherwise provided.

SECTION 2. The several sums appropriated by the provisions of any act to meet which this act provides a tax, shall, so far as moneys are required to be paid to the boards or officers of any institution or commission, be paid out of the general fund in the State treasury to the proper board or officer, at such times and in such amounts as the general accounting laws of the State prescribe, and the disbursing officer of such board or commission shall render his accounts to the auditor general thereunder.

SEC. 3. The auditor general shall apportion each year the amounts herein directed to be raised among the several counties in this State as provided by law for the apportionment of State taxes.

Approved June 23, 1899.

stated in Doc. No. 699, H. of R., 56 Congress, 1st Session, as follows:

"MICHIGAN. In 1897 the Legislature passed a law paying 1 cent per pound for refined sugar manufactured. The act appropriated $10,000 for the payment of bounties earned, and provided that any excess should be drawn from the general fund, and this act was to continue in force for seven years. The Michigan Sugar Company's factory was built and drew the bounty to the extent of its appropriation for its first year's run, and put in a claim for the balance of the bounty over and above the appropriation, and in addition to this eight other factories were built and operated in various parts of the State during the year of 1899, manufacturing altogether 301,106,113 pounds of sugar, entitling them to $301,106.13, earned as bounty. Seeing this big demand that was going to be made on the treasury of the State, the Legislature undertook to amend the law, giving one-half cent per pound instead of one cent, as under the old law. The governor of the State insisted that the law should be amended by fixing a limit of $25,000 as the maximum that could be paid to any one factory. This was not done, and the governor vetoed the bill. This left the old law paying one cent per pound as bounty for sugar in force. The Attorney-General of the State rendered an opinion to the auditor that warrants should not be drawn on the $200,000 appropriated for this purpose, claiming in his opinion that a bounty is not a proper expense of the State on which a tax could be predicated."

After the passage of the bounty act in 1897 the relator, relying upon that, upon the decisions of the Supreme Court of Michigan on the salt bounty law, and the good faith of the State, erected at Essexville, a suburb of Bay City, such a factory as was required by the law. It earned and received in 1898 $28,451.07 sugar bounty.

In 1899 it earned $24,262.99 as sugar bounty.

Its claim for that sum was presented to and allowed by the Commissioner of the State Land Office. A warrant was demanded from the Auditor-General upon the State Treasurer, and he refused it when a mandamus was asked for from the Supreme Court of Michigan to compel him to issue it.

The Supreme Court of Michigan held the sugar bounty law unconstitutional and The Michigan Sugar Co. thereupon appealed to this Court.

The case stood before the Michigan Court in this condition.

The people of Michigan, understanding the great benefits to be derived from the establishment of the sugar beet

industry in the State, and appreciating that it was an experiment that might be costly to those who would engage in it, passed the sugar bounty law of 1897, being Act No. 48 of the Public Acts of that year. Sec. 1,325 et seq., Compiled Laws of 1897.

In adopting this legislation, it followed in the course of other States of the Union, of the United States, and of foreign countries.

The history of the fostering care and financial aid given to the industry in France and Germany is interesting, and the fact is developed that nowhere has the business of manufacturing beet sugar been organized and carried on without the aid of public bounty. Everywhere the business in its infancy has been carried on at a loss and the great public good resulting from its establishment is evidenced in the decreased imports of sugar, the reduction of price on an absolute necessity, the encouragement of agriculture, the increase of taxable property.

Act 48 provides that there shall be paid out of the State Treasury to any person, firm or corporation, engaged in the manufacture in the State of Michigan of sugar from sugar beets grown in the State of Michigan, one cent per pound upon each and every pound of sugar so manufactured under the conditions and restrictions of said act.

Act No. 48 of Public Acts of 1897, page 55, Sec. 1245, Compiled Laws of 1897.

The petitioner shows that it has complied with all of the provisions of said Act, has earned the bounty, the money is in the treasury, and the Auditor-General declines to issue his warrant until directed so to do by this Court.

Section 6 of said Act 48, being Sec. 1250, Compiled Laws of 1897, provides that when the Commissioner of the State Land Office shall have verified a claim, the Auditor-General of the State shall draw a warrant upon the State Treasurer for the amount thereof.

The compensation provided for by the Act is not a gift, and the moneys for which the Court is asked to direct the Auditor-General to draw his warrant has actually been earned. The relator would never have been organized, and its money would not have been expended, save in reliance upon the Act in question. The price which the relator was required to pay, viz.: $4.00 per ton, was fixed by the Act, and has been paid. The beets received have been weighed, and the sugar manufactured, packed, etc., by the State's agents, who have been compensated by the relator at the price fixed by the Legislature, and all provisions of the

Act having been complied with, the compensation having been earned, it should be paid.

The payment of this compensation as agreed involves more than the mere discharge of a liability—it involves the honor and integrity of the great State of Michigan.

The State by the legislative and executive has decided that its public interest demands that the manufacture of beet sugar from sugar beets grown in the State shall be encouraged, that a certain price shall be paid for the beets in order to influence the agriculturalists to plant, cultivate and crop them, that a certain precautionary system of inspection, etc., should be employed, all at the expense of those who would invest their means in a manufactory, the cost of which is large and the result of which is doubtful, and has now, that the investment has been made and the risk assumed on the faith and credit of the State's promised recompense, no right to withhold it when earned. The action of the State was free and voluntary, depending wholly upon considerations of public policy, but when taken and acted upon, those who have trusted to the State's honor and done all that was asked, can not morally or legally be deprived of their recompense, so solemnly promised and faithfully earned.

The compensation offered was limited in amount and time. No one questions the right of the State to withdraw its offer. The State has not undertaken to deny liability, but the Auditor-General refuses to comply with the plain mandates of the statute.

The amount claimed is fixed, and the Legislature at its general session in 1899 raised the money necessary to pay this identical sum.

The Legislature of Michigan in 1859 passed an act, being Act No. 200, page 551, of the Public Acts of that year, reading as follows and entitled: "An Act to encourage the manufacture of salt in the State of Michigan.

Section 1. *The people of the State of Michigan enact,* That all companies or corporations formed, or that may be formed for the purpose of boring for and manufacturing salt in this State, and any and all individuals engaged or to be engaged in such manufacture, shall be entitled to the benefits of the provisions of this Act.

Sec. 2. All property, real and personal, used for the purpose mentioned in the first section of this Act, shall be exempt from taxation for any purpose.

Sec. 3. There shall be paid from the treasury of the State, as a bounty to any individual or company or cor-

poration, the sum of ten cents for each and every bushel of salt manufactured by such individual, company or corporation, from water obtained by boring in this State: *Provided*, That no such bounty shall be paid until such individual, company or corporation shall have at least five thousand bushels of salt manufactured."

Approved February 15, 1859."

In 1861, by Act No. 186, the former Act was amended. Laws of 1861, page 305.

The amendments required that all claimants must be engaged in the business by August 1st, 1861.

That the limitation of tax exemption should expire in five years.

That ten cents should be paid for each barrel instead of bushel, and no one should receive more than one thousand dollars.

In the case of The East Saginaw Salt Mfg. Co. State Auditor, 9th Michigan, 326, this Court held that the bounty earned after the Act of 1859 took effect and prior to the amendment should be paid in accordance with the terms of the original Act. *"That the relators had acquired a vested right to the bounty offered by the Act of 1859, upon all the salt manufactured before the Act of 1861 took effect, and that they could not be deprived thereof by the last mentioned Act."*

It will not do to suggest that the validity of the Act was not in question, for the right of the claimant depended upon the original act, and if that gave a right, the question whether the amendment took it away was presented and the Court held that a *vested right was acquired* which the parties *could not be deprived of* by the last Act. The Court determined the question. There are cases where the rights of private parties have been determined under void laws, but no cases can be found in Michigan where the Supreme Court failed to discover that a law was invalid because unconstitutional "on principle," where the law itself was directly in question, and the questions involved related to taxation as against the interest of the State. In such cases, the Supreme Court is the jealous guardian of the interests of the people of the State, and the fact that it upheld the bounty, shows that "on principle" it considered the right to grant it unquestionable.

The same law as amended was again before the Court in East Saginaw Salt Mfg. Co. vs. East Saginaw, 19 Mich., 259.

Cooley, C. J., in stating the questions involved, spoke earnestly of the serious and alarming consequences that

would flow from the interpretation contended for by the complainant, viz.: That the law was a contract, the obligation of which was impaired by its amendment or repeal. Certainly under such consideration as the law then had, the Court would have found it a nullity, if it was such. On the contrary, the holding in the former case was approved, and the Court said: "When a bounty is earned, it becomes a vested right, and we fully agree with former decision of this Court in People vs. Board of State Auditors, 9th Michigan, 327, *that the party earning it can not then be deprived of the right.*" "But when is bounty earned?" * * * The money bounty on each bushel of salt above the required quantity, was earned when that bushel was made."

Judge Campbell, in the dissenting opinion, page 288, said: "Whatever these various offers in 1859 may have meant, there can be no doubt that so long as they remained unrevoked, every acceptance of them formed a contract which could not lawfully be repudiated."

In the case of Smith vs. Auditor-General, 85 Mich., 205, the holding of the Court that a bounty earned was a vested right, of which the owner could not be deprived, was again approved.

"It was the duty of the Legislature to provide money for the payment of the bounty offered by the State."

Smith vs. Auditor-General, 85 Mich., 205.

In Taylor vs. Ypsilanti, 105 U. S., 60, etc., at page 65, Harlan, Judge, said: "In 1859 the Legislature of Michigan passed an Act providing for the payment from the State Treasury of a certain sum, by way of bounty, for every bushel of salt manufactured by any individual, company or corporation, from water obtained by boring in Michigan, and exempting from taxation property used for such purposes. Laws of Mich. 1859, page 551. That law was subsequently amended, and in People vs. State Auditors (9 Mich., 327), decided in 1861, it was held that the relator, a manufacturing company, acquired a vested right to the amount offered by the original act, for all salt manufactured prior to the amendatory statute reducing the bounty. And the doctrines of that case were reaffirmed in East Saginaw Mfg. Co. vs. East Saginaw, etc. (19 Mich., 259), decided in 1869, after the passage of the Act of March 22, 1869. The diligence of counsel, aided by our own researches, has not disclosed any adjudication of the Supreme Court of Michigan prior to May 26, 1870, in

which the doctrines of these cases were recalled, or in any degree modified."

In Calder vs. Henderson, 54 Federal, 802, at 804, the Court said: "It is to be noticed that the bounty offered by the statute is for sugar thereafter to be produced, and to those producers only who shall accept the provisions of the Act and comply with its terms, etc. In our opinion, the "bounty" so called in the statute, is not a pure gratuity or donation by the government, but was intended to be, and is in fact, a standing offer of reward and *sugar bounty earned was property.*"

"The claim of David R. Calder, who accepted the terms of the Act for the year 1891, for sugar produced during that year, is a claim arising under a contract, a just claim, and one that the government cannot avoid otherwise than by repudiation. It is more than a possibility coupled with an interest."

The theory upon which this Act is attacked is that the purposes for which the money is paid are private and not public, but this can not be sustained. While it is a bounty in a sense, yet, strictly speaking, it is a compensation offered to the public (i. e., to all persons who will perform the service required) for the purpose of encouraging the investment of capital, the employment of brains, ability and labor in an enterprise deemed hazardous, which, if successful, will be a public benefit.

The money when paid goes to private individuals, but only to recompense them for money already expended and service already performed, which was for the benefit of all alike.

The moneys paid by this State to its soldiers and the payment of which has been sustained by this Court, went to the individuals, but it was in compensation for the brain, ability, labor and risk employed and undertaken for the benefit of all.

The bounty paid by the government to encourage the construction of speedy ships is paid to individuals, but the benefit is public.

The bounty paid for the destruction of wild animals and pestiferous birds is paid to individuals, but it is for the public good. Not the good of every individual who makes up a part of the public—but yet enough of the individuals to be the public. The homes of Michigan may not have been in actual danger in '61-5, the lives of many people were never threatened by wild beasts, yet the purposes of the benefits were none the less public.

"Public and individual intrests are often so intimately connected and blended together, that it is impossible to

advance the one without at the same time advancing the other. There is no public good without at the same time a private benefit. They are inseparable. The former cannot exist without the latter. If the latter be not promoted, it proves that it be not a public good. That which affects the interest of an entire community must to a greater or less degree affect the interest of each member of it. To determine whether a matter is of public or merely private concern, we have not to determine whether or not the interests of some individuals will be directly promoted, but whether those of the whole or the greater part of community will be."

The quoted language is from the opinion of Dixon, C. J., in Soens vs. Racine, 10 Wis., 214.

In the case of Salt Company vs. East Saginaw, 13 Wallace, page 372, Justice Bradley said, in speaking of the salt bounty act and in approval of the decree of the Supreme Court above referred to, that

"The question in this case is, whether any contract was made at all; and, if there was, whether it was a contract determinable at will, or of perpetual obligation? * * * It declares, in purport and effect, that *all* corporations and individuals who shall manufacture salt in Michigan from water obtained by boring in that State, shall be exempt from taxation as to all property used for that purpose, and, after they shall have manufactured 5,000 bushels of salt, they shall receive a bounty of 10 cents per bushel. That is the whole of it. As the Supreme Court of Michigan says, it is a bounty law, and nothing more; *a law dictated by public policy and the general good,* like a law offering a bounty of fifty cents for the killing of every wolf or otherwise destructive animal. *Such a law is not a contract except to bestow the promised bounty upon those who earn it,* so long as the law remains unrepealed. There is no pledge that it shall not be repealed at any time. As long as it remains a law every inhabitant of the State, every corporation having the requisite power, is at liberty to avail himself, or itself, of its advantages, at will, by complying with its terms, and doing the things which it promises to reward, but is also at liberty, at any time, to abandon such a course. There is no obligation on any person to comply with the conditions of the law. It is a matter purely voluntary; and, as it is purely voluntary on the one part, so it is purely voluntary on the other part; that is, on the part of the Legislature, to continue, or not to continue, the law. The law in question says to all: You shall have a bounty of 10 cents per bushel for all salt manufactured, and the property used shall be free from taxes.

But it does not say how long this shall continue; nor do the parties who enter upon the business promise how long they will continue the manufacture. It is an arrangement determinable at the will of either of the parties, as much so as the hiring of a laboring man by the day."

In the matter of the expenditure of public funds, the Legislatures of the various States have much greater power than has the Congress of the United States, and this has been recognized by the Federal and State Courts.

In the matter of the payment of a bounty on sugar by the general government, we have the benefit of the judgment and opinion of the Supreme Court of the United States.

In the case of Field vs. Clark, 143 U. S., page 649, the contention was made that the bounty provisions of the Revenue Act of 1890 were unconstitutional, and therefore that the entire Act was void. The Court declines to pass upon the validity of the bounty provisions, holding that the rest of the Act would be valid if those provisions were void.

The Court of Appeals of the District of Columbia, in the Miles case (so-called), reported in 5 D. C. App., 138, had held that the bounty provisions of the general Revenue Act were invalid, but the question was not directly involved in that case, and the holding upon that point is considered dictum.

In the case of the United States vs. Realty Co., 163 U. S., page 427, the Supreme Court of the United States again refuses to pass upon the constitutionality of the bounty provision of the Act of 1890, holding that the Act of 1895 making appropriations for the payment of the bounty earned under the Act of 1890, was valid, and that the bounty should be paid.

In the case of Allen vs. Smith, 173 U. S., page 389, the question of who was entitled to a bounty was presented and the Court, on page 402, speaking through Justice Brown, says: "Bounties granted by a government are never pure donations, but are allowed either in consideration of services rendered or to be rendered, objects of public interest to be obtained, production or manufacture to be stimulated, or moral obligations to be recognized."

We contend, first, it is unnecessary to determine whether Act 48 of the Public Acts of 1897 is valid, in order to entitle the relator to the mandamus prayed for to compel the Auditor-General to issue his warrant in payment of

the earned bounty, and second, that Act 48 of the Public Acts of 1897 is valid.

The answer of the Auditor-General presented three questions:

First. Were Acts 48, Public Acts of 1897, and 263 of Public Acts of 1899, in part, appropriations of public moneys for public purposes?

Second. Did the two acts taken together or separately make an appropriation by law to pay a sugar bounty when earned?

Third. If necessary, can the schedule prepared by the State Accountant, used by the Committee on Ways and Means, read for the information of the House and Senate when passing Act No. 263, Laws of 1899, and upon which the Legislature acted, and showing the purposes for which the bill was passed, and which is now on file in the office of the State Accountant, who is charged with the responsibility of keeping an account of the State's funds, be availed of by this Court in directing the Auditor-General as to the payment of money admitted to be due, mentioned in the schedule, and for which amount a tax has been levied and collected, and the money is now on hand?

We wish to call the Court's attention to the following cases, viz.:

In People vs. Squire, 107 N. Y., 593, S. C. 1 Am. St. R., p. 893, at 897, the Court said: "Neither is the act a local or private one within the meaning of the section referred to. * * * This act is general in terms, applying to all cities in the State of a certain class, and to every corporation carrying on business requiring the use of electrical wires or conductors in such cities. That the number of such cities is limited or restricted does not make the bill a private or local one, within the constitutional meaning and intent of these words, was expressly decided in the cases referred to.

How many companies there are to which this bill applies we have no means of determining; but the *fact that a general law is passed regulating the operations of all such companies,* in cities of the class referred to, does not constitute it a private or local bill, although it may happen that such companies are located in one or more cities of the State."

See also Ferguson vs. Ross, 126 N. Y., 459, 465.
People vs. Warden, 30 N. Y. S., 1095.
Daggett vs. Colgan, 92 Cal., 53.
McRae vs. Commissioners of Land Office, 89 Mich., 464.

In Consumers' Gas Co. vs. Harless, 131 Ind., 446, an act granting to companies, corporations, etc., organized for the purpose of drilling for petroleum or natural gas, the right to condemn and appropriate land for the purposes of laying their pipes, held not to be a local or special act, as it applied generally to a particular class of cases.

In Waterloo Woolen Mfg. Co. vs. Shanahan, 128 N. Y., 345, held a reading of the statute itself must determine whether it is a public purpose (p. 366). The Court there hold that the determination by the Legislature that a purpose is public is conclusive, and that such determination is to be gathered from the language and scope of the act.

In Allen vs. Pioneer Press Co., 40 Minn., 117, S. C., 12 Am. St. Rep., 707, at page 709, the Court said: "Laws public in their objects may be confined to a particular class of persons, if they be general in their application to the class to which they apply, provided the distinction is not arbitrary, but rests upon some reason of public policy growing out of the condition or business of such class. Such distinctions are being constantly made, as in the case of minors, married women, common carriers, railroad companies and the like. This kind of legislation is not confined, as plaintiff seems to contend, to cases involving the police power of the State. For example, it may be public policy to give to laborers a lien or other preference for the collection of their wages, not given to other creditors, or to give a lien to laborers in one business, while it would be neither practicable nor politic to give it to laborers in some other employment. So long as the law applies equally to all engaged in that kind of business, treating them all alike, subjecting them to the same restrictions, and giving them the same privileges under similar conditions, there it is *public in its character.*"

A law which refers to a certain relation or condition, and operates upon all standing in that relation, is a general law.

Iowa R. L. Co. vs. Soper, 39 Iowa, 112.

Act authorizing board of health of Detroit to require money to be raised by tax is not for a local purpose, as it concerns the preservation of the public health.

Davock vs. Moore, 105 Mich., 120.

In State vs. Griffin, 69 N. H., 1, the Supreme Court of New Hampshire held an act prohibiting throwing sawdust into Lake L. a public act. The Court said: "The act confers upon Manchester or its citizens no indi-

vidual or exclusive right or benefit, within the meaning of the constitution. Every inhabitant of the State is entitled to enjoy the benefit conferred by the statute on complying with the necessary conditions."

We submit that it is a matter of no difficulty for the courts to hold that a tax shall not be levied for a private purpose, but it is a question of great difficulty at times to determine whether the purpose of a tax is private. The learned Justices of the Michigan court disagreed upon that identical question in the Salem case, and that question has always been determined in the individual case. The real determination in the Salem case is the law of Michigan to-day, but the question there presented will not materially aid this court in determining the one now presented. Justice Cooley wrote the opinion in the salt bounty case, 19 Mich., 259, and it was filed on the 26th day of October, 1869. That case was as nearly parallel with the one at bar as it is possible for two cases to be, in so far as the facts are concerned, and he said in writing the unanimous opinion of the court, as we have heretofore pointed out, that "a bounty earned is a vested right." On the 26th day of May, 1870, the opinion in the Salem case was handed down, and in it he refers to the fact that in the course of the argument allusion was made to the power of the State to pay bounty, and with the salt bounty case and the decision rendered therein in his mind, he gave expression to the sentence quoted in respondent's brief, viz.: *"But it is not in the power of the State, in my opinion, under the name of a bounty or any other cover or subterfuge, to furnish the capital to set private parties up in any kind of business or to subsidize their business after they have entered upon it."* Certainly the learned jurist did not refer to the salt bounty act, which had been twice before the Supreme Court, and which had been declared binding until revoked by the State, as a "cover" or a "subterfuge." He expressed himself clearly at the time, and at this distant day, standing in the light of the history of Michigan, which is free from the blot of deception and repudiation, his meaning is still plain and unquestionable, viz: That when the real purpose of a bounty act is to furnish capital to invest in business, or subsidize business after it has been entered upon, then it is void; but where the great State has held out a reward for the actual investment of capital in a business known to be hazardous and experimental, and recognizing the great public benefits to be derived therefrom, fixes the compensation which must be paid by any person or corporation engaging in the business for the product which it must necessarily buy, regu-

lates the manner of transacting the business in its various details, and reliance being placed upon such proffered reward, capital is invested and such reward is earned, then, as was held in the salt bounty case, it becomes a vested right. The law becomes "a contract to bestow the promised bounty on those who earn it." By the sugar bounty act, *no class of individuals, no corporation then in existence* was favored at the expense of any other. It was proposed for the benefit of all, at the partial expense of the State, and at the great expense of the individual engaging in the hazardous enterprise, to determine whether the soil and climate of Michigan was fitted for the production and manufacture of one of its greatest needs, a question which had always been determined elsewhere with public aid. The inducement, reward or bounty was offered and, when earned, is part paid, and the respondent wants to know whether the remainder shall be repudiated.

In the portion of the opinion of Justice Campbell in the same case, cited by the opposing counsel, it is stated that "taxation for private purposes is no more legal than robbery for private purposes, and where an enterprise is conducted by private persons for their own private benefit, the public authorities have no control over the expenditures and no share in the profits, it is a private enterprise and not a public one," could not have been referring to a bounty such as the one in question here, or the one which he and the other justices in the same court had upheld, and in further defining a public purpose he said: "No enterprise can properly be regarded as a public enterprise in which the public has no voice." In the sugar bounty act the business of manufacturing sugar was not engaged in solely for private benefit. The public authorities do control the expenditure of the money, and do require conditions precedent to the payment of the money, and have a voice in the enterprise, if it can properly be called an enterprise, so that without in any way departing from the rule laid down in the Salem case, and, in fact, clearly within so much of the dictum of that case as referred to the payment of bounties, and within the rule established by long usage and recognized by this court, the position of relator can and should be sustained.

Second. The two acts do make an appropriation.

Every contention for either side of the first proposition makes for our claim upon this question. The Attorney-General argues that the act makes an appropriation of public moneys for private purposes, and therefore should have a two-thirds vote. We argue that the appropriation was for a public purpose. Both agree that the act made

an appropriation, our only disagreement being upon the purpose.

The Legislature was not engaged in making false representations to the public when it passed Act 48. Under the form of law it offered compensation for the investment of capital, brain and manual labor, to the end that the public *interests would be served.* It followed the example of its predecessors in passing the salt bounty act, which had received the approval of the highest courts in the world, Michigan and the United States. It followed the example of its predecessors in passing the soldier bounty and other bounty laws. It meant to do and did something upon which the public relied, and relying, acted. The appropriation here is as specific as it was in any of those acts. In the salt bounty matter, the Legislature said "there shall be paid from the State a bounty." Here the same thing is said, and further, how and when the bounty shall be paid is expressly provided for. No set words are required to make an appropriation.

Act 48 of the Laws of 1897, enacted in effect a contract between the State and relator. As such contract the statute should be construed as creating certain liabilities, among which was that of providing the compensation which it contracted to pay, and which compensation the payment whereof was thus incurred became an expense of the State's properly included as an item of the general expenses of the State government.

See Huidekoper's Lessee vs. Douglass, 3 Cranch 1, at page 70.

Act 263, Laws of 1899, therefore, when read in connection with said Act 48, establishes relator's claim. Act 263, Laws of 1899, included the sum due relator. It provided a tax, included wherein is this sum. There is thus provided by constitutional means the funds wherewith to compensate relator. Act 48 makes the contract, provides the compensation, and makes appropriation. Act 263 creates the fund. After the State's liability is fixed under the first law, No. 48, everything further, if anything, is essential under the constitution and laws is contained in said Act 263, Laws of 1899.

See State vs. Gerhardt, 145 Ind., 439.

The primary object of the provision in the constitution, Art. 14, S. 5, that no money shall be paid out of the treasury except in pursuance of appropriations made by law, is to guard against official mal-administration. That is

shown by the fact that some recent constitutions provide punishment for such acts in similar provisions.

In this case there is no doubt as to the obligation created by Act 48; it cannot be contended that the State did not arrange to meet this expense, the presumption being in view of its liability that it would include this claim in its expense budget. There was resting upon the State a legal and moral obligation to pay this claim. The credit and good name of the State required its payment. It is submitted that it will not be presumed that the State of Michigan intended to repudiate said liability to relator, but rather that according to the policy of the State in meeting its just obligations it included in said aggregate sum of $1,016,602.72 (Act 263, Laws of 1899), the amount due relator.

The law creating the liability is a public law, the obligation is a State expense, and as such properly included in Act 263. Every positive safeguard of the law is complied with in this case. It is not a private matter, nor one calling for specific acts of appropriation. The money to pay the claim of relator should be included under the terms of the contract (Act 48, Laws of 1897) in the items of State expense. As a matter of fact, it was so included, according to the presumption based on reading said Act 263 in connection with Act 48. If it should in any future event be not so included, the burden should be upon the State to show it. Where such was the fact, it could be established. Here, however, the fact is that it was included, and it is sought by technicalities to avoid paying relator as fairness and honesty require that it should be paid. Every consideration of justice impels to the payment of relator's claim.

In Campbell vs. Commissioners of State Soldiers and Sailors Monument, 118 Ind., 119, it is held that an appropriation by *implication* results from acts indicating such legislative intent. The Court there said: "The use of technical words in a statute making an appropriation is not necessary. There may be an appropriation of public moneys to a given purpose without in any manner designating the act as an appropriation. It may be said generally that a direction to the proper officer or officers to pay money out of the treasury on a given claim or class of claims, or for a given object, may by implication be held to be an appropriation of a sufficient amount of money to make the required payments." In that case $200,000.00 had been appropriated for the specific purpose of building the monument, and the court decided that such sum should be devoted to that purpose, but that the further expenses

were to be paid under that provision of the law which authorized the State Auditor to draw warrants on the treasury for all moneys directed by law to be paid out of the treasury to public officers, or for any other object whatever, as the same became payable. "This subdivision," the court holds, "when construed in connection with the Act of 1897, clearly authorizes the Auditor of the State to draw his warrant on the Treasurer of the State for the merely incidental expenses incurred from time to time." The constitutional provision of Indiana is that no money can be drawn from the treasury except in pursuance of an appropriation made by law. There the authority to pay the claims was based on the provisions of a general statute. In this case, Act 48 creates a far stronger implication, because it expressly provides that: "Sec. 6. When any claim arising under this act is filed, verified and approved by the Commissioner of the State Land Office, as hereinafter provided, he shall verify the same to the Auditor-General of the State, who shall draw a warrant upon the State Treasurer for the amount thereof, payable to the person, firm or corporation to whom said sum or sums are due."

The construction placed on the statute in the cases of Campbell vs. Com'rs, 118 Ind., 119, and Henderson vs. Com'rs, 28 N. E., 127, shows that there may be an appropriation by implication in addition to a specific appropriation.

Act 48 did not require to provide a specific fund to be known as the "beet sugar fund." It is not necessary to create a fund to effect a complete appropriation. (22 Am. St. Rep., 646.) The fact that such fund was provided (Sec. 7) for the first $10,000 raised under said act for compensation, and the excess for 1897 and 1898, did not restrict the effect of such appropriation as was carried by implication in said act.

The purposes of Sec. 7 must be read in the light of the purposes and provisions of the entire section, which are that the Auditor-General should incorporate a beet sugar bounty tax in the tax rolls of 1897 and 1898, which taxes are to a very large extent received and paid over to the State treasury after the 1st of January of the following calendar years, and whatever amount the bounty for the years 1897 and 1898 should exceed the ten thousand, money should be drawn out of the State treasury. Now, this provision, of course, taken in connection with the appropriation bill and the bill providing for taxation, must have referred to the fiscal year, and the bounty for which the order in this case is asked to be drawn was

earned, and the claim therefor presented during the fiscal year of 1898, so that aside and apart from an appropriation by implication and without considering the provisons of Act 263, here is a specific appropriation for the moneys necessary to pay this claim in the original act, which has heretofore been recognized and acted upon by the Auditor-General.

The act was not limited as to the amount appropriated except as provided by the sum agreed to be paid as compensation. Sec. 3 provides that the act shall have effect for seven years. Sec. 7, while providing for an appropriation of a specific sum, does not limit or qualify the effect of the further appropriation raised by implication by the terms of said act.

In People vs. Goodykoontz, 22 Colo., 507, an act establishing the office of steam boiler inspector and fixing salary therefor, payable as the salary of other State officers, was held to constitute an "appropriation" of such amount in compliance with the constitutional requirement that no money should be paid out of the treasury except upon appropriations made by law.

As to Act 263, Laws of 1889, in Durritt vs. Buxton, 63 Ark., 397, it is held that where the County Court levies a special tax to build a court house, the money arising from the collection is an appropriation for the purpose for which it was levied, within constitution 1874, article 16, section 12, providing that no money shall be paid out of the treasury until it shall be appropriated by law.

The amount due relator had been determined in a lawful way. He, therefore, had the right to demand the order of the Auditor on the Treasurer to pay this claim, and it was the duty of respondent to issue it.

13 Utah, 108.

The power of the Legislature is plenary, being subject only to the constitutional provisions. There are no provisions in the constitution that render essential the establishment of a special fund, or the legislative obedience to the general method of bookkeeping that may be adopted by the departments of administration of the State's affair. The essentials of a complete appropriation are embraced where there is a means of determining the amount due by proper officers, and the raising of the amount required therefor is provided for, or where there is a designation that such payment be made out of the general fund.

The inclusion in Act 263, Laws of 1899, of the amount of relator's claim, is a practical construction of Act 48,

Acts of 1897, showing that the Legislature in making said appropriation construed it as being in payment of the claim which was due as compensation under the terms of the Law of 1897.

See Pacific Coast S. S. Co. vs. U. S., 33 Ct. Cl., 36.

In Cutting vs. Taylor, 3 So. Dak., 11, the Court said: "We apprehend that an appropriation law is to be construed under and by the same rules as other legislation. The primary object in the construction of any statute is to discern the object of the Legislature in making it. When, therefore, the territorial Legislature directed, as in Section 3 of said Act, that "the Auditor * * * shall issue and deliver to the treasurer in each city, town, etc., his warrants upon the territorial treasurer for an amount equal to two per cent of the premiums received upon policies issued upon property in any part of such city, town, etc., and such warrants shall be paid by the territorial treasurer * * * upon presentation thereof," there can be no doubt that such legislation was intended to and did constitute a valid appropriation under the law as it then was." On page 950 the Court said: "We are disposed to consider it an open proposition on the part of the State to the various fire companies, which, when accepted and acted upon, as in this case, has at least sufficient of the element of a contract to justify its recognition by the State, and an appropriation to redeem its promise."

See also State vs. Hipple, 7 So. Dak., 234.

In Town of Higate vs. State, 7 At., 898, the Constitution of Vermont provides that "no money shall be drawn out of the treasury unless first appropriated by act of Legislature." Act No. 11, Laws of 1884, granting aid from the State to an excessively burdened town as to its highways, made no appropriation for that purpose, but directed the Auditor to draw orders on the State Treasurer for the amounts required by the judgment of the court against the State, rendered under the Act. At the same session a general appropriation act was passed, one section of which appropriated money to pay "such demands against the State as may be allowed by the Auditor of Accounts." Held, that this was an appropriation of money to pay said orders, within the contemplation of the constitution.

Third. Should the Court sustain the relator's claim on the ground that the State havng contracted to pay the compensation would be held bound to pay from the moneys

appropriated, as hereinbefore contended, then it is submitted that relator's case is established.

However, should the Court require proof, it is contended:

(First) That the facts of which the Court takes notice judicially, prove the fact of appropriation.

(Second) That the evidence set forth in paragraph 6 of relator's petition is admissible and proves it.

(First) The Court, in construing the acts making appropriation, can take judicial notice of the facts material. The Attorney-General, in Osborn, Commissioner, vs. Wabash R. Co., 123 Mich., 689, doubtless adopted that procedure and availed himself of the report, etc., filed in the office of the Railroad Commissioner.

In the construction of these acts, the prime object is to ascertain and carry out the intention of the Legislature. As was said in City of Evansville vs. Summers, 108 Ind., 189 at page 82: "The chief thing to be explored is the intention. This the judiciary is to seek in the history of legislation, in the objects contemplated, etc." And in U. S. Freeman, 3 How., 556, at page 565, the Court said: "A thing which is within the intention of the makers of the statute is as much within the statute as if it were within the letter."

The hisory of the Act 263 would of necessity include that which was properly a general expense of the State government. The Act 48, making the compensation due relator a matter of State expense, is a matter embraced in the history of Act 263.

"The two subjects, 'debts' and 'expenses,' are so germane that a legislative provision for 'a debt' may be constitutionally made under a title expressing a provision for expenses."

Desty, Taxation (Edition 1884), page 434, citing State vs. State Auditor, 32 La. Ann., 89.

Further, this Court in tracing the history of said Act 263 can consult and consider without proof or evidence legislative journals and other records of departments or accountants which were proper to be considered in determing the amount included in said Act 263, Laws of 1899.

See the Pacquette Habana, 175 U. S., 678.

See also Martin vs. Wis., 51 Wis., 407, which holds that the court will take judicial notice of records and papers in the office of the Secretary of State.

Chief Justice Marshall, in 6 Cranch, 307, at page 314, said: "The spirit as well as the letter of a statute must be respected, and when the whole context of the law demonstrates a particular intent in the Legislature to effect a certain object, some degree of implication may be called in to aid that intent."

(Second.) The evidence submitted in paragraph 6 of relator's petition is not offered "to contradict or vary the terms of said act," but to show the particular purposes for which the money raised thereunder should be expended.

Paragraph sixth shows exactly what the Legislature provided for in raising the entire $1,016,602.72 in 1899 and $982,262.00 in 1900. The Auditor-General knows it, and the schedule upon which the Legislature based its action was understood by the people of the State. It was published broadcast in all the papers, was a matter of common knowledge, and is now a matter of public record that the earned bounty due the Michigan Sugar Company was to be paid out of the moneys raised by Act 263. The amount of beet sugar bounty earned by it in excess of the tax of 1897 and 1898 is $42,714.06; the amount remaining unpaid is $24,262.99. It is now in the treasury, put there by the people of the State of Michigan for the purpose of paying the obligation of the State to relator, and the records of the Legislature and the Auditor-General's office prove it. This court is not concerned with the question of the advisability of the legislation or the duty of the Legislature. If it was, we would want to be heard upon the right of relator to the bounty upon which it depended and the justice of paying the money earned which will only extend *towards* making good losses incurred in the public interest.

There is no contention that a single word or sentence in Act 263 should be altered or any meaning attached thereto other than is plainly expressed.

The Auditor-General, by his demurrer, admits the truth of our allegations that the money was raised for the purpose claimed, and contends in the fourth reason given for not drawing the order that if it was contemplated that a portion of the taxes levied in pursuance of said act should be appropriated for such purpose, *it was beyond the power of the Legislature to do so.* Therefore, in addition to question of materiality, we have the question of power squarely presented.

If the Legislature authorized the payment of certain money to a certain person, and there was a statement or claim on file showing what the payment was made for, would this court deny the parties an opportunity to make the proof?

Judge Field, in the case of Ho Ah Kow vs. Nunan, 12 Fed. Cas., p. 252, 6546, said at page 255: "The statements of Supervisors in debate on the passage of the ordinance cannot, it is true, be resorted to for the purpose of explaining the meaning of the terms used; *but they can be resorted to for the purpose of ascertaining the general object* of the legislation proposed."

In U. S. vs. Colier, 25 Fed. Cas., p. 527, No. 14,833, it was held that the facts and circumstances which led to and surrounded the passage of the said Act of March 3, 1847, as derived from the journals of the two houses of Congress and the *documents laid before Congress,* were to be considered in construing the act.

See also Martin vs. Wisconsin, 51 Wis., 407, cited supra.

In construing Act 263, the rules of construction fully authorize the court to ascertain the intent of the Legislature and to give it effect. In Green vs. Graves, 1 Doug. (Mich.), 354, the court held: "Where the words are not explicit, the intention is to be collected from the occasion and necessity of the law."

And in the leading case of the People vs. Utica Ins. Co., 15 Johns, 359, at pages 380-1, the Court gave the following rule of construction: "Such construction ought to be put upon a statute as may best answer the intention which the makers had in view. And this intention is sometimes to be collected from the cause or necessity of making the statute, and sometimes from other circumstances; and whenever such intention can be discovered, it ought to be followed with reason and discretion, in the construction of the statute, although such construction seems contrary to the letter of the statute. * * * And such construction ought to be put upon it as does not suffer it to be eluded."

In People vs. Lacombe, 99 N. Y., 43, the Court, referring to these rules, said: "While the rules stated are specially applicable in considering the phraseology, they may also be invoked when several statutes are passed relating to the same subject."

Such a construction as the Attorney-General contends for would not only suffer the statute to be eluded, but would defeat the legislative intent, besides leaving the money which was intended to pay relator's claim in the State treasury, and depriving relator of the compensation which the State agreed to pay.

Now that it has been demonstrated that sugar beets may be successfully raised in Michigan, with the law authorizing the payment of bounty still unrepealed, with the money raised by taxation for this purpose and in the treasury, we are told by the State of Michigan that the law is unconstitutional, notwithstanding the bounty has been earned, and in an exactly similar case The People vs. Board of State Auditors, 9 Mich., 327, the right to the payment of an earned bounty was sustained by the Supreme Court of Michigan.

The rule that the Supreme Court of the United States will follow the State Court in construing its constitution does not apply where a right is involved under the Constitution of the United States; and the provision of the Constitution of the United States, which we contend is involved here, is that the State of Michigan, by virtue of the decision of its Supreme Court, attempts to deprive the relator of its property without due process of law.

The Supreme Court of Michigan did not expressly overrule their decision in the case of the People vs. Board of State Auditors, cited supra, where they held that the salt bounty, when earned, was a vested right, therefore it was property. They sought to distinguish the cases, saying in their opinion in this case, referring to the two salt bounty cases on page 679, 124 Mich.:

"From an examination of the cases referred to, it is evident that the constitutionality of the salt bounty act was not raised or passed upon."

They say further on page 682:

"But it has been held several times in this State that an unconstitutional statute is a statute only in form, and lacks the force of law, and is of no more saving effect to justify action under it than as though it had never been enacted."

If the rule contended for applies here that this court will follow the decision of the State Court, which decision shall it follow? Did the Supreme Court of Michigan enforce payment of the salt bounty under an unconstitutional law because its unconstitutionality "was not raised or passed upon?" If the one is unconstitutional, the other was. Both were passed under the constitution of 1850. We submit the first decision is the better law.

We do not agree that there is any such binding rule in this Court. The main contention of the Attorney-General before the Supreme Court of Michigan was that the case there was ruled by the People vs. Salem, 20 Mich., 452, and it is upon that case that the case at bar was decided in the Supreme Court. But the case of the People vs.

Salem is not the law and never has been the law in this Court. In the case of Pine Grove Township vs. Talcott, 86 U. S., 666, on page 677, this Court said: "It is insisted that the invalidity of the statute has been determined by two judgments of the Supreme Court of Michigan, and that we are bound to follow these adjudications (People vs. Salem, 20 Mich., 452, and Bay City vs. State Treasurer, 23 Mich., 499). We have examined those cases with care. With all respect for the eminent tribunal by which the judgments were pronounced, we must be permitted to say that they are not satisfactory to our minds. We think the dissenting opinion (by Mr. Justice Graves) in the one first decided is unanswered. Similar laws have been passed in twenty-one States. In all of them but two, it is believed their validity has been sustained by the highest local courts. It is not easy to resist the force of such a current of reason and authority. The question before us belongs to the domain of general jurisprudence. In this class of cases this Court is not bound by the judgment of the Courts of the States where the cases arise. It must hear and determine for itself. Here, commercial securities are involved. When the bonds were issued, there had been no authoritative intimation from any quarter that such statutes were invalid. The Legislature affirmed their validity in every act by an implication equivalent in effect to an express declaration. And during the period covered by their enactment, neither of the other departments of the government of the State lifted its voice against them.

As in that case, so in this, the Supreme Court of Michigan had compelled the payment of the salt bounty under a law which it now says was unconstitutional, and which it intimates would have been held unconstitutional when it was decided if the question had been raised. The Legislature asserted by its act and in the details it prescribed, that in offering the bounty the State tendered a contract to anyone who would accept it, and agreed to pay to such as would earn it. Other departments of the State Government, namely, the State Land Office, had supervised the operation of the law and verified the demand of the Legislature. In the case of Taylor vs. Ypsilanti, already cited, and determined by this Court, October term, 1881, the Court, referring to Talcott vs. Township of Pine Grove, said: that it was determined in favor of the plaintiff in the Circuit Court of the United States for the Western District of Michigan, the question being on the constitutionality of the act of March 26th, 1869, the same that was in question in People vs. Salem. That Court, the Circuit and District Judges concurring, declined to follow the case of People vs. Salem, upon the ground, among others,

that the act was valid under the laws of Michigan, declared and acted upon by all the departments of the State Government at the time of its passage, as under the principles announced in this Court and in the highest Courts of most of the States. The judgment was affirmed in this Court upon a writ of error, in the October term, 1873. "After adverting to the principle that a statute was not to be pronounced void unless the repugnancy to the constitution be clear, and the conclusion that it exists, this Court, speaking by Mr. Justice Swayne, affirmed the judgment, holding the act to be consistent with the constitution of Michigan.

Ry. Co. vs. Otoe, 16 Wall., 667.
Olcott vs. Supervisors, 16 Wall., 678.

Under the circumstances it was said that we could not yield to the authority of the decisions of the State Court without abdicating the performance of one of the most important duties with which this tribunal is charged. The Court said further in that case, on page 71: "The sound and true rule (said Mr. Chief Justice Taney in Ohio Life Insurance Company vs. County Treasurer, 16 How., 416-432) is that if the contract when made is valid by the laws of the State as then expounded by all the departments of its government and administered in its courts of justice, its validity and obligation cannot be impaired by any subsequent act of the Legislature of the State or decision of its courts altering the construction of the law."

The case of Pine Grove vs. Talcott was affirmed in the case of Hall vs. Wisconsin, 103 U. S., on page 8, where in a case similar in principles to the one at bar, the Court said: "The question raised by the record is within our jurisdiction. In the exercise of that jurisdiction in such cases this Court is unfettered by the authority of State adjudications. It acts independently and is governed by its own views."

Pine Grove vs. Talcott, cited above, has also been followed in Burgess vs. Seligman, 107 U. S., on page 34.

The Constitution of Michigan, Art. XIII., Sec. 11, provides:

"The Legislature shall encourage the promotion of intellectual scientific and agricultural improvements; and shall as soon as practicable provide for the establishment of an agricultural school, * * * and may make the same a branch of the University for instruction in agriculture, and the natural sciences connected therewith, and place the same under the supervision of the regents of the University."

Surely the article is as broad a grant of power as was needed to authorize the Legislature of Michigan to pass the sugar bounty law.

How will the Legislature "encourage" agricultural improvements? The constitution points out one thing it shall do in addition to encouraging agricultural improvements, i. e., "shall as soon as practicable provide for the establishment of an agricultural school." A school was established. (Act 130, Laws of 1855; C. L. 1897, Sec. 1844.) Ever since then the Legislature has gone on making appropriations for the agricultural school at each session.

It has established a State Board of Agriculture.

Provided for the publication of knowledge derived from agricultural experiments.

Exempted from taxation the property of agricultural societies.

Authorized the levy of a general tax of not more than one-tenth of a mill on the dollar on the taxable property of the county whose board of supervisors may order it, for the benefit of an agricultural society which has itself raised $100.

The State collects this agricultural tax now, and has done so for the past fifty years, and the Supreme Court has sustained the validity of the tax.

Silsbee vs. Stockle, 44 Mich., 565.
Boyce vs. Aud. General, 90 Mich., 318.
Harding vs. Bader, 75 Mich., 321.

The money so raised may be given for premiums to trotting and running horses at fairs or regularly appointed meetings.

C. L. 1897, Sec. 11396.

In 1881 the Legislature authorized a bounty of $2 a hundred pounds for merchantable sucrose sugar manufactured from sugar cane, cornstalks or beets grown in the State of Michigan, yielding 80 per cent of crystalized sugar, etc.

The act expired in 1886. We are not aware that anything was ever earned or paid under it.

In the main case relied upon by the defendant, that of People vs. Salem, 20 Mich., 452, it was held that neither the State nor its municipal creations could use public money for building a railway. In Bay City vs. State Treasurer, 23 Mich., 499, in following the Salem case, the court said that a railway was a work of internal improvement contrary to the express provisions of the constitution. Thomas vs. City of Port Huron, 27 Mich., 320, and Dodge

vs. VanBuren Circuit Judge, 118 Mich., 189, follow this case. Attorney-General vs. Pingree, 120 Mich., 550, reaffirmed the doctrine that the State could not engage in a work of internal improvement, under Article XIV., Section 9, of the Constitution. The latter was the case when it was attempted to have the City of Detroit buy and operate a street railway system.

But the granting of a bounty for the production of beet sugar is not a work of internal improvement. Internal improvements have a well-defined meaning, and are applied to roads and bridges, railroads, improvements of rivers for purposes of navigation, etc. The term does not apply to the erection of State buildings, the exercise of the police power of the State, or general State purposes.

In Section 45, Article IV., of the Constitution of Michigan, the Legislature has the power to appropriate public money and property for private purposes if a two-thirds majority vote for it. The section in full is:

"The assent of two-thirds of the members elected to each house of the Legislature shall be requisite to every bill appropriating the public money or property for local or private purposes."

And in a recent case, Allen vs. Board of State Auditors, which involved a mere donation of public money, it was held bad by the Supreme Court, not because the State did not have the power to give, but because the law had failed to receive the required vote. The court held that a donation of money for private purposes, in that case compensation to a man who had been unjustly convicted of a crime, could only be carried by a two-thirds vote.

Bounties have been sustained in other States under similar provisions of their State constitution. See Institute vs. Henderson, 18 Col., 98, on page 106, where no objection was made to an act to encourage the planting of trees upon the roadsides and along the irrigating canals, etc., on the score of the bounty provided thereby. In Kansas the sugar bounty has been sustained. See Cole vs. First National Bank, 56 Kas., 571.

The great Napoleon said:

"Agriculture is the soul, the foundation of all national prosperity."

Montholon, 2, 304.

The beet sugar bounty originated with him and a recent English paper says:

"NAPOLEON'S SUGAR BOUNTY HAS IMPAIRED ENGLAND'S REFINING INDUSTRY.

One of the great staple trades of old time in England—a trade which helped largely to build up the fortunes of Bristol and Greenock, and even of London—was the refining of raw sugar. The industry has now gone, from the same cause which has turned the colonial plantations into waste places—the European sugar bounties.

At Bristol there were five refineries at work a few years ago; to-day there is only one. At Greenock in 1884 there were 16 refineries; in 1900 two. Statistics of a similar kind might be quoted in respect to London, to Dublin, to Liverpool and other towns. Glance only at the change which 16 years have wrought. In 1884, out of a total consumption in this country of 1,050,000 tons of refined sugar British refineries supplied 800,000; to-day, out of a total consumption of 1,500,000 tons, our refineries supply only 600,000 tons. In 1884 we refined 80 per cent of the total consumption. Had we kept that proportion we should now be refining 1,000,000 tons a year.

A century ago Napoleon conceived the idea of growing beet sugar in Europe for the sake of destroying the wealth of England's famous West Indian colonies and of injuring the home refining industry, which contributed to the wealth and therefore the power of the nation. That was the origin of the bounty system."

The relator relied in good faith on the law of 1897 and earned the bounty. The State owed a moral obligation which it had a right to pay, and its provision for that purpose was warranted by the law and was eminently proper to be made. The case of United States vs. Realty Company, 163 U. S., 427, we think, is conclusive on this subject. In that case, while not passing directly upon the subject of whether the bounty of two cents a pound allowed by the McKinley Act of 1890, was constitutional, this court held that, inasmuch as the beneficiary (a sugar planter in Louisiana) had relied upon that act and earned the bounty, Congress had a right to recognize the moral obligation and pay the money thus earned. This was done by a provision in the Sundry Civil Bill, providing for this payment. It was needless to decide at that time whether the McKinley bounty of two cents a pound was constitutional or not, for the reason that that bounty had been repealed by the Wilson Tariff Law of 1894. In the case of Allen vs. Smith, 173 U. S., 389, this court said, on page 394, referring to

the act of March 2nd, 1895: "There was a further clause (under which the bounty in this case was paid) to the effect that there should be paid to those producers who complied with the provisions of the previous bounty law of 1890, by filing an application for license and bounty thereunder required prior to July 1, 1894, and who would have been entitled to receive a license as provided for in said act, a bounty of eight-tenths of a cent per pound on the sugars actually manufactured and produced during that part of the fiscal year ending June 30, 1895, comprised in the period commencing August 20, 1894, and ending June 30, 1895, both days inclusive. The constitutionality of this act was affirmed by this court in United States vs. Realty Company, 163 U. S., 427."

We respectfully submit that the case of United States vs. Realty Company is conclusive of the relator's right in this case. The bounty law having been passed and the bounty earned, and the Legislature having appropriated the money to pay it, it was the plain duty of the Auditor-General to draw the warrant. The State may repeal the bounty law, but it has not seen fit to do so. The wisdom of granting the bounty has been abundantly justified, and we can say of the bounty offered in this case, as this court said in the Realty Company case: "Bounties granted by a government are never pure donations, but are allowed either in consideration of services rendered, or to be rendered, objects of public interest to be obtained, production or manufacture to be stimulated, or moral obligations to be recognized. To grant a bounty irrespective altogether of these considerations would be an act of pure agrarianism; and to determine who is entitled to the benefit of the bounty is but little more than to determine who has rendered the consideration."

Respectfully submitted,

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